IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 5900 of 2004
Date of decision : 15.1.2007

Banwari Lal

.....Petitioner.

Versus

Municipal Committee, Kanina

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.D.S. Nirban,Advocate
for the petitioner.

Mr. Sanjay S. Chauhan, Advocate
for the respondent.

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VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the order dated 21.8.2004 passed by the learned Civil Judge (Jr. Divn.), Mohindergarh dismissing the petition moved by the petitioner under Order 21 Rule 32 C.P.C.

It is not in dispute that the learned Addl. District Judge, Narnaul passed the following order on 21.5.1986 :-

> *"In the result, the suit brought by the plaintiff is directed to be decreed only to the extent that the defendant Municipal Committee shall not dispossess him from the disputed property except in due course of law. The appeal shall stand partly allowed in the manner indicated above. The parties are left to bear their own costs of these proceedings."*

The petitioner had moved an application for restoration of possession, which was alleged to have been taken forcibly by the judgment

debtor. However, the said application has been dismissed merely on the ground that the petitioner would be at liberty to file contempt petition but no execution application was competent. The learned executing Court has not gone through the merits of the case whether the petitioner has been evicted against the decree passed by the Court or not ?

The learned counsel for the petitioner has challenged the order by placing reliance on the judgment of this Court in ***Harbans Singh and another Vs. Daulat Ram and others 1993(2) P.L.R. 399*** *and* ***Ram Singh Vs. Sukh Ram 1989 PLJ 718*** to contend that it was open to the executing Court to restore possession to the petitioner which was wrongly taken by the respondent. These judgments were even relied upon by the petitioner before the learned Executing Court, however, without discussing the same the learned executing Court merely observed that these were not applicable to the facts of the case.

In view of the law laid down, referred to above, the impugned order cannot be sustained. Accordingly, revision is accepted and the case is remanded back to the executing Court to decide the claim raised by the petitioner on merit. Parties through their counsel are directed to appear before the executing Court on 15.3.2007.

15.1.2007. **(VINOD K. SHARMA)**
'sp' **JUDGE**